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AUTHOR	Biggins, Barbara; Handsley, Elizabeth
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ABSTRACT

This paper discusses the legal obligations owed by librarians to the users of their facilities, focusing on the viewing of pornography on the Internet in the public library. The meanings commonly ascribed to the word censorship are presented. Australian federal law that governs the classification of films, videos, computer games, and publications and sets up the requirements related to their access and display is summarized. The guidelines for classification are presented, including the criteria for Refused Classification items, i.e., items that cannot legally be made available. Libraries' obligations under the Online Services Act are addressed, as well as child protection ramifications of Internet pornography in public libraries. Finally, the adequacy of existing policies in libraries is considered, and it is concluded that there are effective ways in which libraries can be both provider and protector. (Contains 26 references.) (MES)

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Censorship in Public Libraries

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By: Barbara Biggins & Elizabeth Handsley

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Proceedings

Censorship in Public Libraries

Barbara Biggins* & *Elizabeth Handsley

In this paper we will be discussing the legal obligations owed by librarians to the users of their facilities. In doing so we hope to convey two central messages: first that these are legal obligations, regardless of how one might view the morality of the situation, and second, that the obligations are based not just on a judgment about what is offensive, but on a concern to protect vulnerable members of society.

We start by describing a set of events which actually happened about a year ago to a woman of our acquaintance in Adelaide:

The scene: the local library.

The players: a mum and her children, one of whom is a 10 year old boy

A teenage boy

A member of library staff

The action: Mum and the kids walk past a computer where the teenage boy is surfing the net. The 10 year old's attention is caught by what the teenager has retrieved: the screen is filled with a pornographic image of a woman, naked from the waist down, who has been photographed at close range with her legs spread wide apart.

The dialogue:

Boy: Mum, what's that boy looking at, and why is that lady doing that?

Mum: I might just find someone from the library staff to ask. [they approach the Information Desk] Excuse me, but is that boy over there really supposed to be surfing pornography sites from a computer where little kids can walk past and see it?

Library staff member: We have the same filtering software that the government requires us to have, and that's all we need to do. If some stuff still gets through ... [shrugs].

Exit stage left: one mother, very dissatisfied, and her children.

We assume the teenage boy resumed his activities, if indeed they were interrupted in the first place.

Now, there could be any number of reactions to that scenario.

Many parents, like the woman who recounted this story, would not be impressed. They do not expect that a visit to the local public library will result in their children or themselves being exposed to hard core pornography. Parents may be somewhat inured to being confronted by the covers of uncovered girlie magazines in the local news-agency but unsolicited exposure to hard core pornography is another thing. This is all the more so when you stop to consider that the image on the screen could just as easily have been one of a sex act, even a violent one. Most parents would prefer to be able to choose when and how they introduce their children to the mysteries of sex, and

would rather not have pornography as their starting point. In particular, most intelligent and educated mothers would rather bring their sons up with a bit more respect for women's sexuality than the kind of image in question here displayed.

(Such people might also worry for the parents of the teenager: presuming he was underage, they might also feel aggrieved that the library was allowing him to spend his library time in such a manner!)

Some librarians might share the view that the staff member expressed in our story: 'We've done everything we've been told to do, and that's all we have to do.' As this paper will hopefully demonstrate, that is an attitude fraught with risk. Libraries and their staff should not wait to be told what their obligations are, they should seek advice lest trouble find them instead.

Other members of the library fraternity might wish that the matter had been better handled by the staff member. They might feel the staff member could have at least shown a bit more interest in what the teenager was looking at and why the mother was concerned, and given some recognition to the fact that computers need to be carefully placed if filtering software is not completely effective. Some people might have this reaction intuitively, without any knowledge of whether the staff member was right in his assertion that the library had already fulfilled its obligations. It's not just a legal matter, it's a matter of making your clients comfortable.

Some people (librarians and others) might believe the central concept in the story is 'freedom of speech': it's not up to people in positions of authority to restrict the audience for certain messages just because someone might find the message problematic. On such grounds you might conclude that even if there are other obligations on the library, they should be resisted. While the freedom of speech argument is superficially appealing, if it's used to draw a line under a librarian's legal obligation we need to wonder whether somebody has been watching too much American TV, for reasons we will discuss shortly.

Others might lay responsibility at the feet of the mother: it's up to her to protect her children, or to debrief them when they accidentally come into contact with things they don't understand. She shouldn't be allowed, as a mother, to evade those obligations by controlling the actions of others.

Some might take the stance that pornography is inherently harmless anyway, and the mother in the story was just being uptight and moralistic. Or they might argue that there are far more 'offensive' images to which children are exposed all the time: malnourished children in Africa, violence on the streets of Dili and so on.

Now that we've laid out those few arguments about pornography (which, incidentally, apply to other kinds of restricted material), we'll discuss the role of Australian law in regulating access to that material.

Firstly, we'd like to look at the meanings commonly ascribed to the word censorship as it applies to today's topic.

There's been a long history of debate about 'censorship' in public libraries. These debates have, in the past, raged around the suitability and availability of certain texts. Librarians are encouraged to stand up for freedom of speech. (Australian Library and Information Association 1985) Librarians are exhorted not to fear the power of words. Librarians are commonly urged to resist pressure to remove from their shelves or not to stock certain texts, and not to hide behind selection policies. (Cram, Jenny 1996; Schrader, Alvin 1997).

By and large, the issues have centred around which, if any, materials a public library might consider not stocking, from the huge range of unrestricted print materials available in Australia. It's also centred on whether public libraries should provide younger children with access to more 'adult' texts.

In order to understand the issue of 'censorship' in public libraries in the context of Australian law, it is necessary to understand the difference between these two types of issues. One is about the

material that is made available to the adult readership in the library and one is about how and to whom certain kinds of material are made available. We believe that the word 'censorship' has something of a bad odour because it is traditionally associated with the former type of issue: censorship is about preventing *any* access to material. Australian law does do some of this, but primarily it is concerned with *how* and *when* and *to whom* access is granted. In particular, it is concerned with regulating the access of children to certain classes of material. In other words, it is a system of *classification*, not censorship.

We have federal law which governs the classification of films, videos, computer games and publications, and sets up the requirements related to their access and display. This system is based on the co-operation of all states and is administered by the Office of Film and Literature Classification (OFLC) which is part of the Attorney General's portfolio. As a minimum, librarians' practice in the area of 'censorship' needs to conform to these requirements.

The legal basis can be found in the *Classification (Publications, Films and Computer Games) Act 1995*, and in the associated *Guidelines* for the classification of each of these media.

The National Classification Code, which is part of the Act, sets out the basic principles which underpin the system of classification. It requires that classification decisions are to give effect as far as possible to the following principles:

. adults should be free to read, hear and see what they want;

b. minors should be protected from material likely to harm or disturb them;

c. the need to take into account community concerns about:

(i) depictions that condone or incite violence, particularly sexual violence; and

(ii) the portrayal of persons in a demeaning manner

(Australia. Parliament, 1996 p35)

The Act also requires that 'matters to be taken into account making a decision about a classification include:

d. the standards of morality, decency and propriety generally accepted by reasonable adults; and

e. the literary, artistic or educational merit (if any) of the publication, film or computer game; and

f. the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character; and

g. the persons or class of persons to or amongst whom it is published or is intended or is likely to be published.'

(Australia. Parliament, 1996 par 11)

So, it's clear that Australia's classification system is not based solely on adult freedoms, but gives equal weight to the interests of minors, and to community concerns about particular issues. You'll notice that one interest that's not formally recognised in the legislation is freedom of speech, but this could get some collateral support from the freedom of adults 'to read, hear and see what they want'. But it always has to be balanced against the other interests, including those of children.

This approach can be contrasted with that in the US, where the First Amendment to the Constitution forbids any law abridging freedom of speech. It could be remarked in passing that this does not mean in practice that freedom of speech is absolute - it certainly gives way to matters such as national security! - as witness the McCarthy hearings. But it does mean that freedom of speech is a pretty powerful trump card when it comes to debates between, say, pornographers and parents like the one in our story. There is no such trump card in Australian law. Therefore Australian librarians should be cautious in referring to freedom of speech in any argument about

what Australian policies should be, lest they use it in the way the First Amendment is used in the US. (Peck, Robert (2000))

If Australian libraries used the Classification Act principles to guide library policies would it make any difference to current practice?

If we look at the field of publications, the *Classification Act* provides that all publications are Unrestricted, unless they fall into the categories of Restricted R1, Restricted R2 or Refused Classification (RC). Items in this last category cannot legally be made available; this is the sense in which we said earlier that the Australian law does engage in some outright censorship. Items which are refused classification are those which:

> (a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or
>
> (b) depict in a way that is likely to cause offence to a reasonable adult a minor who is, or who appears to be, under 16 (whether or not engaged in sexual activity); or
>
> (c) promote, incite or instruct in matters of crime or violence.

The Classification Board's Guidelines elaborate:

> Publications will be classified 'RC':
>
> (a) if they promote or provide instruction in paedophile activity;
>
> or if they contain:
>
> (b) descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is or who looks like a child under 16 ;
>
> (c) detailed instruction in:
>
> > (i) matters of crime or violence,
> >
> > (ii) the use of proscribed drugs;
>
> (d) realistic depictions of bestiality;
>
> or if they contain gratuitous, exploitative or offensive descriptions or depictions of:
>
> (e) violence with a very high degree of impact which are excessively frequent, emphasised or detailed;
>
> (f) cruelty or real violence which are very detailed or which have a high impact;
>
> (g) sexual violence;
>
> (h) sexualised nudity involving minors;
>
> (i) sexual activity involving minors;
>
> or if they contain exploitative descriptions or depictions of:

(j) violence in a sexual context;

(k) sexual activity accompanied by fetishes or practices which are revolting or abhorrent;

(l) incest fantasies or other fantasies which are offensive or revolting or abhorrent.

The categories that are of most interest to librarians, however, are R1 and R2, as they do give you some degree of choice as to whether and how to make them available in your facilities. As far as pornography goes, these categories, which are restricted to those over the age of 18 years, can broadly be described as those that explicitly depict nudity, or sexual activity, in a way that is likely to cause offence to a reasonable adult. Publications which are Restricted are highly likely to cause offence to reasonable adults. They certainly aren't just 'girlie mags', they are more the kind of thing you're likely to find in an adult bookshop.

So a library, using Australian classification law as a guide, could make all unrestricted publications freely available, within the limits of their budgets. This would mean that the public library environment is no different from the big wide world outside where all these publications are available. Parents, of course, would need to be aware of this and alert about protecting their children (if that is what they want to do) inside the library as well as outside it.

One potential problem area, in our view, is at the top end of the Unrestricted range of publications. Some publishers push the boundaries of R1 very hard with editions known as the 'Queensland versions'. Queensland does not permit R1 and R2 publications to be sold, so any publisher who wants to publish something for the restricted market, without missing out on the Queensland market, can very carefully carve its publications out to walk a fine line in regard to public offence. Public libraries who wished acquire them and allow them to be accessible to children would have to be prepared to walk that same line. Provided the publication is legally Unrestricted there is no legal issue, but there is still one of public relations and client comfort.

Selection policies might also come into play, with the average porn magazine coming in at around $12 per issue, and the artistic merit being very low.

If a library wished to stock material at higher levels of classification, it would be bound to observe all the statutory restrictions on how and to whom that material can be available. We won't go on about this as we do think it's a bit of straw person: we just don't think many public libraries - if any at all - would be interested in devoting their scarce resources to making such material available. But it is important to bear in mind that the classification system imposes obligations on libraries.

In regard to other media, such as video tapes, there's a sense in which Australia's well developed classification system for films, videos, computer games can make the job easier for librarians. All these materials should carry a classification indicating age suitability (eg M not recommended for those under the age of 15 years). Higher classifications such as MA (15+), and R (18+) have legal force in regard to delivery or screening to underage children, and these restrictions should be observed in public libraries just as they should be in the local video shop.

But what about the Internet? Let's go back to our initial example of the child's unwelcome exposure to a pornographic image on the public library computer. Does the law have anything to say in this regard?

Did the Librarian in our story have any legal obligation to the children who walked past the computer screen? Did he have any legal obligation to require the teenager to remove the images?

Australia's classification laws certainly place limitations on the exhibition of films or publications at the higher levels of classification. The library in our example was in exactly the same position as a cinema, as its equipment was being used to display a film to the public. It doesn't matter that the person operating the equipment was not an employee of the library. And in case you're wondering whether the static image that the teenager had retrieved qualifies for description as a 'film', the

Classification Act defines that term as including 'a cinematograph film, slide, videotape and videodisc and any other forms of recording from which a visual image including a computer generated image can be produced'. The definition excludes certain things, but not Internet content.

Therefore it's pretty clear that the image was a 'film' for the purposes of the Act. It's also safe to assume that the picture in question would have been classified at least R, and therefore not to be shown to anyone under 18. All this means that the library was liable to exactly the same penalties that a cinema would be if it exhibited the same material to a person under 18. We believe this penalty would extend to exposure to the teenager (if he was under 18) as well as to the 10-year-old passer-by.

The *Online Services Act* also covers Internet content. This is administered by the Australian Broadcasting Authority, which is empowered to investigate the source of potentially R and X rated content and if Australian to issue take down notices. If the source is overseas then the ABA can request service providers to block the offending site. (Handsley, E and Biggins, B 2000) Therefore any library that acts as a service provider needs to be aware of its obligations under that legislation as well.

Internet pornography in public libraries also has child protection ramifications. Mental health professionals have expressed growing concern about the impact of exposure to pornography on the child's developing sense of sexual identity. (Benedek, Elissa and Brown, Catherine (1999); Wartella, Ellen (2000); Zillman, Dolf (2000)). Once you recognise the developmental implications of pornography for children, it's only a small step to conclude that the difference between exposure of children to pornography and sexual abuse of children is really only one of degree. Therefore for example the SA law which imposes on 'community professionals' a duty of care to protect children against child abuse could be interpreted as extending to librarians and the exposure of children to pornography. Public librarians might do well to check state law in regard to their duty to prevent and report child abuse.

Furthermore, it may be only a matter of time until someone tests the proposition that librarians owe a duty of care under the common law to protect children from such harmful exposure. Breach of such a duty could lead to a successful damages suit in negligence. This might seem a little far-fetched, but bearing in mind that we're undergoing an information revolution it's reasonable to believe that we're going to witness many things that would have been unheard-of only 15 years ago. The number of young children who are exposed to pornography is going to grow exponentially unless steps are taken. We just don't know how bad the consequences can be, but we do know that the likelihood of bad consequences is also growing exponentially with the number of children exposed.

What's to be done to protect children in this environment? There are real hazards for the unwary child or parent. Is the librarian to be a protector or merely an impartial provider?

Some in the community are unconcerned about such issues. They claim that children today are very 'media savvy', and don't need protection. Others take the view that while children may be technologically more savvy than their parents, they still need protection from content that exploits their immaturity and could harm their development. They argue that 'Knowing how to light a match doesn't stop you being burned', and 'We shouldn't be adopting a 'Little BoPeep' approach: if you leave them alone, they *won't* necessarily come home, and they won't necessarily have their tails behind them either'. For those people who see this as an issue of being able to use their library in comfort, and in the knowledge their children won't be harmed, there will be a temptation simply stop using libraries with their children unless those libraries have adequate policies on Internet use (among other things). This possibility arises quite separately from any of the legal issues that we have identified.

So, are the existing policies that are in place in libraries adequate?

From our brief survey, it would appear not. Most such policies place an onus on the user not to access porn sites, and most require parents to be in charge of children who access the Internet in the Library. (Rockhampton Public Library; Marion Public Library; Queensland State Library)

That's OK as far as it goes, but none seems to adequately deal with the issue of reducing the likelihood of accidental exposure to other users' content. Surely Internet screens should be placed so that content can be seen (at least from a distance) by library staff? This happens in some libraries, but not others.

Libraries can certainly be in the vanguard of offering low cost introduction to the Internet courses designed specifically for parents who haven't yet experienced the Internet and are severely disadvantaged in their ability to supervise their children's Internet experiences. Young Media Australia has researched and designed such a syllabus, which includes ways of keeping children safe on-line (Young Media Australia 1998 *CyberSafety*) .

There is also an excellent series of library based programs prepared and available from the Canadian Media Awareness Network (MNet). They are now putting together a national agreement with the Canadian Library Association for the use of the workshop resources in the public library sector. Anne Taylor from MNet will be in Australia and keen to talk to public library people about this project, at the end of November .

Libraries can also be a source of information about protective strategies. See for example Turow, Joseph and Nir, Lilach (2000) and the very attractive *Protecting Children Online: an ECPAT guide*. Libraries can provide ongoing demonstrations of filters and discussions of their deficiencies. These deficiencies were pretty evident in our opening example. Libraries can recommend the use of server based products that access selected sites on the Internet, such as SmartZone, KidzNet, which give more effective support to the provision to children of developmentally appropriate access to the Internet.

Certainly in Australia, the use by libraries of blocking software is not unconstitutional! (Wallace, Jonathan D 1997).

There are many effective ways in which librarians can be both provider and protector. Indeed Australian law requires it.

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